

PAULINE ESTEVES ET AL.

IBLA 97-165

Decided May 23, 1997

Appeals from a Decision of the California Desert District, Bureau of Land Management, approving mining plan of operations CACA 36957.

Stay denied; Decision affirmed.

1. Environmental Quality: Environmental Statements--Mineral Lands: Environment--Mining Claims: Plan of Operations--National Environmental Policy Act of 1969: Environmental Statements

A plan to conduct exploratory operations in a permitted mining project was properly found to have no significant environmental impact based on an environmental assessment prepared in 1996, in reliance on portions of an environmental impact statement prepared for the project in 1995, that reasonably evaluated cumulative impacts of other mining and applied proper mitigation measures to deal with blasting.

APPEARANCES: Frederick Marr, Esq., Bishop, California, for Appellants Pauline Esteves and Timbisha Shoshone Tribe of Death Valley; Luke Cole, Esq., San Francisco, California, for Timbisha Shoshone Tribe of Death Valley; Roger Flynn, Esq., Boulder, Colorado, for Desert Citizens Against Pollution; R. Timothy McCrum, Esq., Washington, D.C., for Intervenor CR Briggs Corporation; John R. Payne, Esq., Office of the Pacific Southwest Regional Solicitor, Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Pauline Esteves, the Timbisha Shoshone Tribe of Death Valley, and Desert Citizens Against Pollution have appealed from a November 26, 1996, Decision of the Ridgecrest Resource Area, Bureau of Land Management (BLM), that approved a proposed mining plan of operations (CACA 36957) submitted by CR Briggs Corporation (Briggs) for the Briggs Project, an existing gold mine in the Panamint Range, Inyo County, California. Appellants have filed a statement of reasons (SOR) in support of their appeal, and request we stay the BLM Decision pending appeal, pursuant to 43 C.F.R. § 4.21. They

also seek immediate action on their stay request, citing previous action taken by the Board of Land Appeals in an appeal from a 1995 BLM Decision approving the initial mining plan for the Briggs Project, as described in Timbisha Shoshone Tribe of Death Valley (Timbisha), 136 IBLA 35, 36 (1996).

This is considered to be a request for expedited consideration of this appeal, which is granted.

Briggs, the mine operator, has moved to intervene and has furnished a proposed Answer to the SOR filed by Appellants. The request to intervene is granted; Briggs, as the operator directly affected by BLM's Decision, may properly intervene as a party to this appeal. Briggs' Answer is filed and the appeal is now, therefore, ripe for decision on the merits. See 43 C.F.R. §§ 4.412, 4.414.

A stay may issue, under 43 C.F.R. § 4.21, if it is shown to be in the public interest and provided there is a likelihood the party seeking the stay will prevail on the merits, after consideration has been given to the potential relative harm to the parties of stay issuance and provided there is a likelihood of immediate and irreparable harm if a stay is denied. See 43 C.F.R. § 4.21(b)(1). The burden to show a stay should issue rests with the party who seeks it. 43 C.F.R. § 4.21(b)(2). Applying this standard, we find Appellants have shown there is no likelihood they will succeed on the merits of their appeal and affirm the BLM Decision to approve Briggs' exploration plan.

The BLM Decision here under review approved a planned extension of existing operations at the Briggs minesite. The proposal approved by BLM allowed drilling and road construction, under specified limitations, on 31 acres in the North Briggs and Gold Tooth areas of an area previously permitted for mining under an existing mine plan of operations. See BLM Decision at 1; Exploratory Plan of Operations dated May 1, 1996, at 6; id. at figure 3. The decision to allow exploration rests on a decision record finding no significant impact would result from the exploration proposed, based upon Environmental Assessment (EA) CA-065-NEPA96-63. The adequacy of this document, prepared under authority provided by the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(C) (1994) and implementing Council on Environmental Quality (CEQ) regulations, is challenged by Appellants.

They contend the EA failed to consider cumulative environmental impacts of a nearby mining project in Pleasant and Hope Canyons and other mining in the Panamint Range. (SOR at 22, 28.) It is alleged that the EA contains inadequate environmental protection measures, greatly underestimates the consequences of the proposed exploration, and proposes inadequate mitigation measures for controlling environmental damage. (SOR at 32, 34, and 35.)

The EA at issue is not the only NEPA statement prepared by BLM affecting the Briggs Project. In 1995, a detailed Environmental Impact Statement (EIS) for the Briggs Project was prepared by BLM in cooperation

with Briggs, Inyo County, the National Park Service, and the U.S. Army Corps of Engineers. See Final EIS, Briggs Project, Inyo County, California (1995); *Timbisha*, *supra*, at 136 IBLA 36. The EA prepared in 1996 by BLM referred to and relied upon this earlier planning document when considering mitigation measures and cumulative effects of other mining in the Panamint Range. This approach, called tiering by the CEQ regulations, is encouraged. See 40 C.F.R. § 1502.20. Questions concerning the effect of cumulative impacts of other mining operations in the Panamint Range on the Briggs Project were considered in the 1995 EIS; wherein, it was predicted that there would be "a high level of gold exploration" in the vicinity. (EIS at 5-22.) The EIS predicted that:

Within the next three years, BLM anticipates the potential for one new mine being constructed in the vicinity of the [Briggs Project]. BLM has estimated that this potential mine would be expected to disturb approximately 120 acres and remove a total of 150 acres from multiple use until reclamation is completed.

See EIS at 5-22. Cumulative impacts from this anticipated activity were analyzed by the EIS on pages 5 through 23.

Nonetheless, Appellants complain that BLM's EA overlooks the Worldbeater Project of Compass Minerals, Limited, an open-pit mine planned in Pleasant and Hope Canyons, Inyo County. (SOR at 22-28.) Proposed mining and reclamation plans for the Worldbeater Project are included in the case file before us on appeal. The Worldbeater Project is proposed as a cyanide leach facility, according to the plans provided, that will disturb about 166 acres on the western flank of the Panamint Range about 5 miles east of Ballarat townsite, in an operation similar to that anticipated by the 1995 EIS.

[1] Discussion in the EIS concerning such a project and cumulative effects to be expected from such a development and other exploration in the Panamint Range were, therefore, relevant to the analysis made by BLM when the 1996 EA was prepared. The EA adopted and relied upon the analysis of cumulative effects from anticipated mining activity described in the EIS. See EA at 11. In so doing, BLM found that cumulative impacts of the proposed 31-acre exploratory drilling upon other mining activity would be "minimal" because other mining projects in the area "are generally isolated from each other and from the proposed action." (EA at 15.) This finding is supported on the record before us, reasonably evaluates the effects of the Worldbeater operation as presently planned, and is consistent with findings concerning cumulative impacts of existing and prospective mining projects appearing in the EIS. Appellants have failed to show error in BLM's analysis of the cumulative effects of other mining in the vicinity of the Briggs Project.

Appellants also argue that BLM has not considered cumulative effects of other mining exploration presently contemplated by Briggs itself. Contrary to the argument raised by Appellants, however, the cumulative effect

of the near term mining exploration operations in the Panamint Range which were anticipated by the EIS was not overlooked by the EA. The EIS, to which the EA is tiered, observes, concerning probable future mining exploration in the Panamint Range, that "BLM anticipates that future gold exploration activities would disturb about 50 acres of the western flank of the Panamint Range." (EIS at 5-23.) The probable cumulative effects anticipated from such activity are then described. Id. The 31-acre operation proposed by Briggs fits within the described range of activity. It is therefore concluded that BLM's EA, which incorporated the EIS analysis of potential cumulative effects of exploration activity, correctly evaluated the Briggs proposal. Consequently, Appellants have not shown any likelihood of success on the merits of their case concerning this aspect of their appeal.

Appellants' argument concerning mitigation measures adopted by the EA is directed toward possible disturbance of bats by blasting activity near adits in the Gold Tooth area. (SOR at 35-38.) Concerning this potential environmental damage, Appellants argue that analysis of noise mitigation appearing in the 1995 EIS may not be relied upon by the EA because the earlier statement did not specifically deal with the exploration activity now proposed at the Gold Tooth site. (SOR at 37, n.6.) Appellants do not, however, explain why. No error or oversight has been shown in the use made by BLM of mitigation measures for blasting during exploration operations on the 31-acre area to be explored on the Briggs Project. The 1995 EIS describes mitigation measures for activities such as this, which the EA adopts and applies to the presently proposed plan of exploration. This is a proper approach to planning under NEPA. See 40 C.F.R. § 1502.20; Cabinet Mountains Wilderness v. Peterson, 685 F.2d 678, 682 (D.C. Cir. 1982).

Appellants also argue that the Tribal Appellant was wrongly excluded from consultation with BLM and that such exclusion endangers Tribal cultural, religious, spiritual, historic, and natural resources. (SOR at 3, 9, 15, and 18 through 21.) These arguments were rejected in our 1996 Decision in Timbisha at 136 IBLA 39 because the Tribe was landless. There is no question that the Tribe received notice of the proposed exploration activity and was permitted to comment, as an interested party to the planning here under review, and it did so. Because there is no allegation that the land-holding status of the Tribal Appellant has changed since that decision issued, our ruling on this issue also remains unchanged. Because the Tribe is presently without Tribal lands, it is not of a class entitled, as a matter of law, to be consulted by BLM. Id. Appellants have not identified any areas where cultural resources exist or are likely to be damaged by mining operations in the 31-acre exploration area, and the record indicates that a search of the site has revealed none. (EA at 11.)

The Tribal Appellant cannot, therefore, succeed on the merits of this issue.

The record on appeal demonstrates, therefore, that Appellants cannot prevail in their arguments concerning perceived inadequacies in the EA. The BLM properly referred to the 1995 EIS in preparing the 1996 EA of

Briggs' proposed exploration plan; by using this method, BLM reasonably evaluated cumulative impacts of other mining in the area, and measures for mitigation of effects of the proposed mining exploration were properly adopted. The BLM correctly found, based upon the EA, that the proposed activity would have no significant impact on the Panamint Range environment. See Red Thunder, Inc., 124 IBLA 267, 282 (1992). Because review of the request for stay has revealed that Appellants cannot succeed on the merits of the issues raised on appeal, their request for stay is denied, and BLM's Decision must, of necessity, be affirmed. See Texaco Trading & Transportation, Inc., 128 IBLA 239, 241 (1994).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the request for stay is denied and the Decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

R.W. Mullen
Administrative Judge